

REMARKS

Claims 2-6, 8 and 10-11 are pending in this application. Claim 1 has been canceled without prejudice or disclaimer. Claims 2-6 and 8 have been amended for the sole reason of advancing prosecution. Claims 7 and 9 have been previously canceled without prejudice or disclaimer. Claims 10 and 11 have been withdrawn as being drawn to non-elected subject matter. Also, on page 2 of the Official Action, the Examiner indicated that "claim 4 and 6 are withdrawn," and also that "claims 1-6 and 8 are now being examined." Due to the Examiner broadening his search in view of the elected species being free of the prior art, Applicants respectfully request clarification that claims 4 and 6 are indeed under examination. If the Examiner has withdrawn these claims, Applicants respectfully request that the Examiner rejoin and examine them in this Application.

Applicants, by canceling or amending any claims herein, make no admission as to the validity of any rejection made by the Examiner against any of these claims. Applicants reserve the right to reassert any of the claims canceled herein or the original claim scope of any claim amended herein, in a continuing application.

No new matter has been added.

In view of the remarks set forth below, further and favorable consideration is respectfully requested.

Applicants note that claim 1 has been canceled without prejudice or disclaimer rendering this rejection moot. Accordingly, the Examiner is respectfully requested to reconsider and withdraw this rejection of claim 1.

III. At page 4 of the Official Action, claim 1 has been rejected under the judicially created doctrine of Obviousness-Type Double Patenting as being unpatentable over copending U.S. Patent No. 7,470,704.

In the Official Action, the Examiner states that claim 1 has been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,470,704 (hereinafter "the '704 Patent"). The Examiner asserts that although the conflicting claims are not identical, they are not patentably distinct from each other because the core structure of the compound recited in previously pending claim 1 encompasses the core structure of the compound in claim 1 of the '704 Patent.

Applicants note that claim 1 has been canceled without prejudice or disclaimer rendering this rejection moot. Accordingly, the Examiner is respectfully requested to reconsider and withdraw this rejection of claim 1.

IV. At page 4 of the Official Action, claims 2-6 and 8 are objected to as being dependent upon a rejected base claim.

In the Official Action, the Examiner states that claims 2-6 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

Applicants note that claim 1 has been canceled and amended claim 2 has been rewritten in independent form. Further, amended claims 3-6 and 8 now depend from

claim 2. Thus, claims 2-6 and 8 are no longer dependent upon a rejected base claim. Accordingly, the Examiner is respectfully requested to reconsider and withdraw this objection to claims 2-6 and 8.

CONCLUSION

In view of the foregoing, Applicants submit that the application is in condition for immediate allowance. Early notice to that effect is earnestly solicited. The Examiner is invited to contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.


In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

THE NATH LAW GROUP

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THE NATH LAW GROUP
112 South West Street
Alexandria, VA 22314
Phone: (703)548-6284
Fax: (703) 683-8396



Gary M. Nath
Registration No. 26,965
Sheldon M. McGee
Registration No. 50,454
Customer No. 34375